

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DUBUQUE DIVISION

UNITED STATES OF AMERICA,

No. CR21-1009-CJW

Plaintiff,

vs.

EMILY ANN NELSON,

TRANSCRIPT OF HEARING
ON MOTION FOR AMENDED
CONDITIONS OF
RELEASE

Defendant.

/

The Hearing held before the Honorable Mark A. Roberts, Magistrate Judge of the United States District Court for the Northern District of Iowa, at the Federal Courthouse, 111 Seventh Avenue Southeast, Cedar Rapids, Iowa, June 16, 2021, commencing at 9:58 a.m.

APPEARANCES

For the Plaintiff: DAN CHATHAM, ESQ.
Assistant United States Attorney
111 Seventh Avenue Southeast
Cedar Rapids, IA 52401

For the Defendant: MARK C. MEYER, ESQ.
Kinnaman, Kinnaman, Russo & Meyer
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425 Second Street Southeast
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Also present: Kristin Hinz, U.S. Probation

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1 (The following transcript was prepared from an audio
2 recording.)

* * * *

4 THE COURT: Please be seated. The matter
5 before the Court is the United States versus Emily Ann
6 Nelson, Number 21-CR-1009. United States is represented
7 by Assistant United States Attorney Dan Chatham. The
8 defendant is here in person with her attorney, Mark
9 Meyer. The matter comes on for a hearing on the
10 defendant's motion for amended conditions of release
11 pursuant to 18 United States Code Section 3142(c)(3).

12 I note from the government's argument that the
13 government contends that because the defendant wasn't
14 released that perhaps that would be proceeding under the
15 wrong section of the United States Code. The government
16 did point out that under 18 U.S.C. section 3142(f) that
17 the Court may reopen a detention hearing and reconsider
18 the issue of detention hearing.

19 Mr. Meyer, what's your position? Is that how you're
20 suggesting the Court should proceed?

21 MR. MEYER: I think you can proceed under
22 either one of those sections, (c) (3) or (c) (f) (sic).
23 I'm -- that's our position.

24 THE COURT: And, Mr. Chatham, is there
25 objection to proceeding under 3142(f)?

1 MR. CHATHAM: Your Honor, the problem at this
2 point with proceeding under 3142 -- excuse me, 3142(f) is
3 the fact -- well, I guess -- I suppose here the defendant
4 has not ordered the transcript of the prior hearing, so I
5 know the Court probably has access to some form of the
6 recording or the transcript there, but the factors that
7 were before the Court and the facts of the case are
8 certainly pertinent to any reopening of the issue of
9 detention. But if the Court were so inclined, I think
10 the issue would be the same. The Court -- more or less
11 the same. I think the Court can take a look at the same
12 factors, but I just note the -- the hampering of this
13 particular proceeding in that the defendant has not
14 ordered the detention hearing transcript.

15 THE COURT: All right. Thank you, Mr. Chatham.
16 And I guess that is something to consider with respect to
17 the transcript. But I was just trying to get us all on
18 the same page about how we are proceeding under the code.

19 Well, it is your motion, Mr. Meyer, and I will let
20 you proceed.

21 MR. MEYER: Thank you, Your Honor. The -- with
22 respect to the prior proceedings, there was a pretrial
23 services report, and that's part of the record. I think
24 that outlines the original reasons for not releasing
25 Emily. There was a recommendation. So I'd ask the Court

1 to take notice of the pretrial services report in lieu
2 of, you know, a transcript of a detention hearing. Even
3 though it's not all that favorable to Miss Nelson, that
4 does set forth the grounds for -- I think that the judge
5 considered in not releasing her.

6 THE COURT: Well, I don't know about your
7 proposal that I consider it in lieu of the transcript.
8 But if you're just asking -- are you just asking at
9 this -- I consider it for the purposes of this hearing?

10 MR. MEYER: Yes, so you're not operating on a
11 blank slate.

12 THE COURT: Any objection to my consideration
13 of the pretrial services report for this hearing,
14 Mr. Chatham?

15 MR. CHATHAM: No, Your Honor.

16 THE COURT: Okay. I have reviewed it in
17 detail, and I will formally consider it for the purposes
18 of this hearing. Anything else, Mr. Meyer?

19 MR. MEYER: Well, two things. Number one, I
20 would proffer on behalf of Miss Nelson that as indicated
21 in the pretrial services report she has had -- come --
22 two pregnancies, came to full term. She was not using
23 heroin at the time of those prior pregnancies, but she
24 was using marijuana, and she stopped using marijuana,
25 doesn't use drugs while she's pregnant. And, you know,

1 if she was released now, she -- after many months of
2 sobriety since her initial appearance in November of last
3 year, she certainly wouldn't use heroin or any other
4 drugs now. So I'd proffer that on behalf of Miss Nelson.

5 THE COURT: Any objection to the proffer,
6 Mr. Chatham?

7 MR. CHATHAM: Your Honor, we do object to the
8 proffer. I mean, the defendant is here. If she wants to
9 testify as to what she did in the past and whether she
10 had used heroin in the past, she's certainly here and
11 could subject herself to cross-examination. Just -- so I
12 guess -- I suppose the Court could consider it even over
13 our objection, but at a minimum, we would ask the Court
14 to take that for -- with whatever grain of salt that
15 would be appropriate given the nature of the proffer.

16 THE COURT: All right. I will -- I will
17 consider that evidence or that proffer subject to the
18 government's objection.

19 Anything else by way of proffer or evidence this
20 morning, Mr. Meyer?

21 MR. MEYER: One witness, Your Honor.

22 THE COURT: Please proceed. Ma'am, if you'll
23 please come forward, and when you get to the middle of
24 the floor there, if you could just please stop and raise
25 your right hand.

1 CHERYL NELSON, DEFENDANT'S WITNESS, SWORN

2 THE COURT: Now please watch your step as you
3 go to that seat. And then when you are seated, please
4 adjust that microphone so that we can hear you and record
5 you. I need you to speak right into the microphone.

6 Mr. Meyer?

7 DIRECT EXAMINATION

8 BY MR. MEYER:

9 Q. Please state your name.

10 A. Cheryl Nelson.

11 Q. And, Cheryl, what town do you live in or near?

12 A. We live in Manson, Iowa.

13 Q. And who are you married to?

14 A. Phillip Nelson.

15 Q. All right. Just -- are you employed outside the
16 home?

17 A. Yes, I am.

18 Q. Where do you work?

19 A. I work for NEW Cooperative.

20 Q. In what town?

21 A. It's based out of Fort Dodge.

22 Q. Do you work at home, or do you drive to Fort Dodge?

23 A. I have an office which is in Pomeroy which is about
24 eight miles from our house, and I do travel from mill to
25 mill, but I am capable of working from home.

1 Q. And what about Phillip?

2 A. Phillip works at Trinity Regional Medical Center in
3 Fort Dodge.

4 Q. What's -- what's -- what's his job there?

5 A. His job title is director of facilities. He's
6 basically in charge of all the facilities that are owned
7 by UnityPoint there in Fort Dodge.

8 Q. How long have you lived in Manson area?

9 A. We have been there six years now.

10 Q. Who else lives in your residence?

11 A. We have two minor children.

12 Q. And it's been proposed by the defense that Emily
13 Nelson be released to your custody at least temporarily
14 in connection with her pregnancy and pending delivery of
15 a baby. Are you onboard with that?

16 A. Yes.

17 Q. Okay. And have you discussed conditions with Emily
18 if she were released to your and Phillip's care?

19 A. Yes, we have.

20 Q. What are the conditions that you've discussed with
21 Emily?

22 A. The conditions are she is not to leave the house
23 alone. She is not to be allowed any internet access, no
24 phone access unless otherwise supervised by her father
25 and I -- myself. Basically the terms would be close to

1 house arrest.

2 Q. And how would you -- would this just be voluntary on
3 her part? I mean, how could those be enforced?

4 A. My husband and I have discussed with our other 2
5 children which are 11 and 13 that they are to contact us
6 if we are not in the house if she is disregarding the
7 rules. They are both onboard with this. They would like
8 to support their sister.

9 Q. And how is -- are you and Phillip out of the home
10 every day eight to five, or how does that work?

11 A. My job is -- it's very lenient. I've already
12 discussed the options with my -- my supervisor. He's
13 very onboard with family -- family emergencies or family
14 conditions. We have discussed that if I am to be out of
15 the home my husband could be at home. His job's a lot
16 more demanding than mine, but he still is able to work
17 from home and has quite a bit of leave time that he can
18 take.

19 Q. All right. And then your 11- and 13-year-olds are
20 also --

21 A. They are home most of the days, yes.

22 Q. And have you as a family looked into how -- meeting
23 Emily's immediate medical needs?

24 A. Yes. With my husband working at the hospital, he's
25 already discussed with some people how to get ahold of an

1 OB to make sure she is seen prior to delivery and how
2 that works through the hospital.

3 Q. And would you or Phillip be willing to transport
4 Emily to and from the jail according to whatever
5 conditions the Court were to impose?

6 A. Yes.

7 MR. MEYER: That's all the questions I have,
8 Your Honor.

9 THE COURT: Thank you, Mr. Meyer.

10 Mr. Chatham?

11 MR. CHATHAM: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. CHATHAM:

14 Q. Ms. Nelson, has the defendant lived in your
15 residence before?

16 A. Yes, she has.

17 Q. And when was that?

18 A. It would have been six or seven years ago, just
19 before we left our previous home.

20 Q. So around -- now, you said you had lived -- you've
21 lived in Manson for about six years; is that right?

22 A. Yes.

23 Q. So it was before you lived in Manson?

24 A. Yes.

25 Q. And where were you living at the time?

1 A. We were living in Alta, Iowa.

2 Q. How long did this defendant live with you?

3 A. Approximately six months.

4 Q. During that time do you know, did she incur any
5 criminal charges?

6 A. Not that I was aware of, no. She was trying to get
7 custody of her other two children back from the state of
8 Florida. We were trying to help her with that.

9 Q. So she does not have custody of her other two
10 children; correct?

11 A. No.

12 Q. And those two children are actually taken care of by
13 her -- their father's parents; correct?

14 A. As far as I know, yes.

15 Q. And during that time the defendant was an active
16 drug user when she was living in your residence?

17 A. Honestly I could not answer that question. I don't
18 know for sure.

19 Q. Sure. She wasn't employed at all, though, during
20 that time; correct?

21 A. Yes, she was.

22 Q. She was. Where was she employed?

23 A. She was first employed at the Buena Vista Regional
24 Medical Center as a housekeeper, and then she was working
25 for a -- another lady who cleaned homes.

1 Q. But eventually she moved back to Dubuque; correct?

2 A. Yes, she did.

3 MR. CHATHAM: No further questions.

4 THE COURT: Thank you, Mr. Chatham.

5 Mr. Meyer?

6 MR. MEYER: Just one more question.

7 REDIRECT EXAMINATION

8 BY MR. MEYER:

9 Q. You don't propose to actually become the guardian of
10 the child act -- after it is born?

11 A. No, we do not.

12 Q. Other arrangements have been made?

13 A. Yes, they have. Her brother and his girlfriend have
14 already started the guardianship proceedings.

15 Q. All right. So your role would be essentially giving
16 her a place to live before and after she gives birth?

17 A. Yes.

18 Q. Until she's ordered to return?

19 A. Yes.

20 MR. MEYER: That's all, Your Honor.

21 THE COURT: Thank you, Mr. Meyer.

22 Mr. Chatham?

23 MR. CHATHAM: Nothing further.

24 THE COURT: Ms. Nelson, I was just looking up
25 Manson here on my phone, and it looks like that's west of

1 Fort Dodge? How far west of Fort Dodge is it?

2 THE WITNESS: 20 minutes, 25 minutes.

3 THE COURT: Okay. And how long did you say
4 you've lived there?

5 THE WITNESS: It will be six years in July.

6 THE COURT: Has Ms. Nelson visited you there
7 previously?

8 THE WITNESS: I don't believe she has, no.

9 THE COURT: Do you know if she has friends in
10 the Fort Dodge or other places near Manson?

11 THE WITNESS: Not that I'm aware of, no.

12 THE COURT: And maybe this shouldn't be of my
13 concern, but since -- it's my understanding that Emily
14 Ann Nelson is not actually Phillip's daughter. Is that
15 correct?

16 THE WITNESS: Biologically, no, she is not.

17 THE COURT: Is she adopted?

18 THE WITNESS: It was a complicated -- he
19 thought he was the father until he found out otherwise.

20 THE COURT: Okay. And I guess that's not
21 really the point of my questioning. She's 28, and she
22 wouldn't be eligible, as I understand it, to be on his
23 health insurance and perhaps your health insurance. Is
24 that your understanding?

25 THE WITNESS: That would be correct, yes.

1 THE COURT: Have you thought about how you're
2 going to pay for the considerable expense of the birth of
3 the child?

4 THE WITNESS: No.

5 THE COURT: Do you know if Emily has made some
6 inquiry into that and tried to figure out if she's
7 eligible for Title XIX or some other assistance to pay
8 for that?

9 THE WITNESS: I don't know.

10 THE COURT: Okay. You understand that while
11 she would be -- this is my understanding anyway, that
12 while she's in the custody of the marshals that the
13 government would have to provide for her medical
14 conditions including her birth. Do you -- as I
15 understand, you have no idea what her plan is to have
16 those procedures paid for; is that right?

17 THE WITNESS: I have no idea.

18 THE COURT: Okay. All right. Thank you.
19 Those are all the questions I have for you. Let's see if
20 that prompted anything else from the lawyers.

21 Mr. Meyer, anything?

22 MR. MEYER: Yeah. Emily has Title XIX.

23 THE COURT: Any objection to that proffer,
24 Mr. Chatham?

25 MR. CHATHAM: No, Your Honor.

1 THE COURT: Any questions, Mr. Chatham?

2 MR. CHATHAM: No, Your Honor.

3 THE COURT: Thank you, Ms. Nelson. You may
4 step down. Appreciate you coming this morning.

5 Anything else, Mr. Meyer?

6 MR. MEYER: No, Your Honor.

7 THE COURT: With respect to your proffer, I
8 don't know if you know this or you can find out for me.
9 Do you know if Ms. Nelson has been receiving any
10 substance abuse treatment since she's been in jail?

11 MR. MEYER: No. That's not afforded to
12 pretrial detainees I don't believe.

13 THE COURT: That was my understanding, but I
14 appreciate you confirming that.

15 MR. MEYER: We did -- one of the things we were
16 thinking about doing is there's a program called Heart of
17 Iowa here in Cedar Rapids. It's for pregnant -- well,
18 for young women with drug problems. It would have been
19 perfect, but because she's not using drugs now, she
20 doesn't qualify for Heart of Iowa. So we did look into
21 sort of a combination of drug counselling and care, but
22 because she's not using, she's not eligible for it.

23 THE COURT: Okay. Thank you, Mr. Meyer.

24 Mr. Chatham, any evidence or proffer you'd like to
25 make?

1 MR. CHATHAM: No, Your Honor.

2 THE COURT: Okay. Then let's proceed to
3 arguments. Mr. Meyer?

4 MR. MEYER: Judge, I'd just rely on the
5 information you've heard today. It's not -- not that
6 often that -- you know, that there's a woman who's about
7 to give birth who's in jail awaiting charges. Maybe
8 you've run into it before. I'm not --

9 THE COURT: I have not.

10 MR. MEYER: You have not, okay. And the last
11 case I had was maybe 15, 20 years ago or something. And
12 so I think it -- I don't think there would be arguably
13 any significant risk to the community if Emily were
14 released to, you know, her stepparents to give birth.
15 She has -- she's not used since November. She's
16 proffered that when she's pregnant she doesn't use for --
17 you know, for whatever weight you give that to -- the
18 Court gives that.

19 You know, looking at it from the standpoint of the
20 child, the child would certainly be better off I think
21 if -- if the mother of the child were allowed more than
22 three days to bond. I guess that's something that I left
23 out, Your Honor, is that I think I put it in the motion
24 that if she gives birth while she's in jail, she goes to
25 the hospital, she gives birth. Three days later, boom,

1 she's back in the jail, child goes somewhere else. That
2 just doesn't seem to me to be optimal by any means for
3 the child or the mother or the long term for society.

4 I mean, what -- you know, but anyway, given the
5 obvious benefits to Emily and the child to have a longer
6 period of time after the child is born and some time, you
7 know, beforehand to get -- be seen by a doctor and her
8 care lined up in Fort Dodge and Manson versus the minimal
9 risk to society that -- and the minimal risk that she
10 won't appear, the safeguards that are in place -- she's
11 not going to be leaving the house. I guess the Court
12 could impose as a condition of release if any of the
13 conditions that Ms. Nelson talked about are violated she
14 calls the Court. I think she's the kind of person that
15 would do that.

16 But I just can't conceive that Emily Nelson, about
17 to give birth, is just going to get to Manson, Iowa, and
18 disregard all the rules imposed by the Court or her
19 parents. That just -- the maternal instincts I think
20 would make the child the most important thing in her --
21 in her -- her universe.

22 So -- and given -- I guess the other thing I would
23 say is the basis for not allowing Emily to be released in
24 the first place is because she was a heroin addict. And
25 as a result of being a heroin addict, she committed theft

1 and drug-related offenses, and she didn't do very well,
2 to say the least, on supervision.

3 Changed circumstances. She's not using. She's
4 pregnant. She's going to give birth soon. I don't think
5 you can realistically say, well, she didn't do well in
6 the past, bingo, she's not going to do well now. Things
7 are totally different now.

8 And so given those altered circumstances, we'd ask
9 the Court to impose some condition so that she can give
10 birth with her family in Manson, be with the child for a
11 period of time. I suggested 14 days. I just picked that
12 number out of a hat. It was longer than three days, you
13 know, probably not as long as necessary to really bond
14 with the child but nonetheless longer -- more than three
15 days. It'd also give her some time to recover from the
16 birth. I mean, giving birth is not, you know -- it's
17 hard work. It's a lot of trauma and physical stress.

18 So that's what we're asking for, Judge, and ask that
19 you modify the conditions of release as we have proposed.

20 THE COURT: Thank you, Mr. Meyer.

21 Mr. Chatham.

22 MR. CHATHAM: Thank you, Your Honor. Our
23 position in our brief I think pretty well encapsulates
24 what our argument is here, but I just wanted to touch on
25 a few of the points here.

1 I'm not taking away at all from Ms. Nelson's
2 sincerity -- Mrs. Nelson's sincerity in their desire to
3 try to keep the defendant on the straight and narrow if
4 she were to be in their house. It does seem like this is
5 a family member who is attempting to do the right thing
6 by Ms. Nelson, by this defendant.

7 That does not mean that they have the capability of
8 doing so or that it is appropriate under the 3142(g)
9 factors to attempt to allow the defendant out of custody
10 pending trial and further proceedings in this matter.

11 First of all, as mentioned in the brief, the
12 citation -- the statutory citation by the defendant
13 doesn't apply in this circumstance. Even if the Court
14 were to look at the thirty-one forty -- excuse me,
15 3142(f), I don't believe that that even contemplates what
16 the defendant is requesting here. That contemplates
17 reconsideration of the order. And at a detention
18 hearing, it's either up or down. It's either detained,
19 or it's released on conditions.

20 And so I don't believe that 3142(f) even
21 contemplates this short, temporary release under these
22 types of conditions.

23 I was looking further this morning, and it's -- you
24 know, it's, frankly, not the government's job to do this,
25 to find the appropriate statutory citation, but looking

1 this morning I saw 3142(i) talking about the contents of
2 a detention order. At the tail end of that it says the
3 judicial officer may by subsequent order permit the
4 temporary release of the person in the custody of the
5 United States marshal or another appropriate person to
6 the extent that the judicial officer determines that such
7 release to be -- excuse me, determines such release to be
8 necessary for preparation of the person's defense or for
9 another compelling reason.

10 That is probably the most appropriate avenue to
11 consider this particular request but -- because, first of
12 all, it appears to look directly at it. Second of all,
13 it provides the Court a framework by which it should be
14 considering this particular request.

15 Under 3142(i), the Court would have to find that
16 release to be necessary either for preparation of the
17 defendant's defense, which obviously she's not claiming,
18 or for another compelling reason. Nothing here today has
19 established anything that is necessary. Even counsel's
20 argument is that it's preferable, it would be better for
21 this person or it would be better for the defendant or
22 for the baby. Nothing about that is necessary.

23 There has been no showing whatsoever, not even an
24 allegation, that the marshal's service and the Linn
25 County Jail is incapable of tending to the needs of a

1 pregnant woman. It's -- there's nothing whatsoever. The
2 defendant comes basically saying, well, they have this
3 procedure, and I don't like it, I would like more, I
4 would like something that would be preferable to me.
5 That is -- falls far short of the showing that she would
6 be required to make either under 3142(i) or for a
7 reconsideration under 3142(f) because, frankly, it's just
8 not necessary. The defendant may like it. It may be
9 better for her mentally. But it's not authorized under
10 the statute, and it's certainly not necessary under the
11 circumstances of this case.

12 And counsel's belief about the defendant and her
13 willingness and all of this notwithstanding, the Court
14 absolutely can take into consideration and should take
15 into consideration her past behavior, her past actions in
16 determining whether under 3142(g) this defendant is --
17 would be someone who, subject to conditions of release,
18 whether they would be a risk to the public, a danger to
19 the public, or a risk of nonappearance.

20 This defendant has had numerous failures to appear.
21 This defendant in this investigation, as was the subject
22 of prior testimony and as alluded to by counsel,
23 essentially swindled a confidential informant who tried
24 to buy drugs from her, took the money and ran. She's not
25 someone whose word can be trusted based on her prior

1 actions. And there's really nothing that has changed
2 other than the fact that she sat in jail for six months
3 or so that would indicate that.

4 She hasn't -- as the Court noted, she hasn't
5 received any drug treatment while in jail. There's --
6 there's just not any reason to believe that the defendant
7 wouldn't be subject -- her pregnancy notwithstanding,
8 that she either before or afterwards might make a
9 terrible decision.

10 And, frankly, based on her record and her record of
11 failing to comply with other courts' orders in various
12 circumstances, she's just not a good bet to have --
13 excuse me, to believe that she would comply with any
14 order or any condition that this Court would impose or
15 any well-meaning condition that her stepfather and his
16 wife would attempt to impose on her.

17 So based on all this, Your Honor, we believe that
18 the defendant has failed to meet his burden under any of
19 the statutes that have been cited here today, and we
20 believe that the defendant's motion should be denied.

21 THE COURT: Thank you, Mr. Chatham.

22 With respect to the appropriate code section, I
23 appreciate the government's citation to the other
24 statutes. 18 U.S.C. section 3142(f) I believe gives me
25 the authority to consider this matter. It does say it

1 can -- detention hearing may be reopened before or after
2 determination by the judicial officer at any time before
3 trial -- so far that all applies -- if the judicial
4 officer finds that information exists that was not known
5 to the movant at the time of the hearing -- in this case
6 that would be both her pregnancy and the possibility of
7 having a third-party custodian during such release -- and
8 it does have a material bearing on the issue of whether
9 there are conditions of release that will reasonably
10 assure the appearance of such a person as required and
11 the safety of other persons and the community.

12 And then I was also looking at 3142(i) this morning
13 for another case, and it's something that comes up
14 occasionally with respect to release of defendants for
15 such things as a funeral of a mother in this case,
16 whether that presents a compelling reason for the
17 release.

18 So I'll attempt to consider both those statutes,
19 whether there's a compelling reason and also under the
20 3142(f), and I think the thing for me to do is consider
21 it as I would at the initial hearing and consider the
22 3142(g) factors.

23 And I will tell you, Ms. Nelson, that I don't
24 remember a case that has had me sort of teeter --
25 teetering on the edge of what my decision should be.

1 There's a lot of -- there's a lot going on here.

2 As we've probably talked about at the last hearing,
3 this is what's called a rebuttable presumption case. And
4 the statute says that I'm supposed to presume that you
5 would be detained because of the nature of your crime,
6 and that me -- in this case it's a crime that's a drug
7 offense punishable by more than -- ten years or more, and
8 in this case it's my understanding you're facing
9 potentially significantly more time.

10 If you have rebutted the presumption, that's when
11 I'm supposed to consider all the factors in this case --
12 and I do want to consider those -- the nature and
13 circumstances of the offense charged including whether
14 the crime involved violence or a firearm. It didn't
15 involve a firearm, but it did involve serious bodily
16 injury to someone. So that factor I believe weighs
17 against you, as does the weight of the evidence as I
18 recall from the prior hearing.

19 Turning to your history and characteristics, I'm
20 very grateful that Miss Cheryl Nelson was here today to
21 speak on your behalf, and I think it's really laudable of
22 her and her husband to bring you into their home and
23 attempt to help you out. That's gotta provide you a lot
24 of comfort knowing that family behind you. You don't
25 have family ties or other ties to Manson, Iowa, although

1 you do have ties to Iowa. I think it's probably in your
2 favor that you would be going to Manson as opposed to
3 Bellevue or the Dubuque area where you might have had
4 other contacts to supply yourself with drugs again.

5 I have to consider your past conduct including your
6 criminal history and your drug and alcohol abuse. I
7 guess I appreciate that you've been off drugs since
8 you've been incarcerated, and even if I accept you at
9 your word that you didn't use drugs in your prior
10 pregnancy, you haven't had treatment. And in my heart of
11 hearts I would like to believe that you, like any other
12 mother, wouldn't want to use drugs while you're pregnant
13 because that could cause some damage to your child.

14 But in this circumstance, unfortunately, you haven't
15 had treatment. And in this circumstance your resolve to
16 stay off drugs has not been tested, and in my experience
17 in prior cases that people on their release or facing
18 going back into prison for a significant sentence if they
19 do have particularly a heroin abuse problem, sometimes
20 the temptation to use the drug is no better than anybody
21 else in this courtroom. Can be sort of overwhelming.

22 It might be that you're able to resist that
23 temptation under the circumstances of living with your
24 family in Manson, at least prior to the birth of your
25 child. I guess I'm somewhat concerned about whether that

1 resolve would disappear once your child was born and you
2 know you're facing prison in a couple weeks.

3 In your case you haven't had success while you've
4 been on release, and the circumstances of your arrest in
5 this case resulting in the theft of the money as well as
6 sort of injecting heroin as the law enforcement was
7 coming for arrest, that really troubles me about, despite
8 your best intentions, how well you would comply with the
9 terms of any release that I might impose.

10 In terms of the nature and seriousness of the danger
11 posed by you if you're released, you know, I don't think
12 you're a violent person, Ms. Nelson. That's -- that's
13 not my concern. And as I said, I would like to believe
14 that you would have your child's best interest at heart
15 rather than perhaps a desire to abuse heroin.

16 But I do need to consider the possibility that based
17 on your track record that you would present a danger to
18 your -- to your child. Again, I'm not saying that to
19 make you feel bad as a mother. I'm not saying that
20 because I don't think you'd do your best. It's just an
21 obvious concern that I should have as a judge in this
22 case.

23 Turning to the proposed conditions of release, maybe
24 it's obvious to people who are in the -- experts in
25 parenting. I'm a parent, but I don't really know the

1 substantive difference that it would make for your child
2 to have 14 days with you instead of 3 days. Maybe
3 there's something in that period that should be obvious
4 to me that that's going to make a huge difference for
5 your child. But that's not evident to me on this record,
6 and that's the time period where I fear you might be most
7 likely to again use heroin.

8 As I said, under the -- 3142(i), the release can be
9 permitted if it's necessary and if there's a compelling
10 reason. I guess in a way it's hard not to say that the
11 birth of a child might be as compelling under certain
12 circumstances as going to someone's funeral. I guess it
13 could be argued that it's more compelling.

14 On the other hand, the government does provide for
15 necessary medical services for someone even in pregnancy.
16 And I don't think it's the argument from the defense that
17 the defendant wouldn't receive adequate medical care,
18 that her child wouldn't receive adequate medical care for
19 the delivery of the child while in the custody of the
20 jail.

21 In light of all that, I am going to order that the
22 defendant remain detained because there's no reason to
23 change my decision previously that the government has
24 carried its burden of showing by a preponderance of the
25 evidence that the defendant poses a danger to the

1 community and a risk of nonappearance.

2 Despite the offers from the Nelson family to take
3 Emily into their care, I conclude there is no condition
4 or combination of conditions I could impose with which
5 the defendant would comply and appear as required at
6 trial and hearings in this matter and that would ensure
7 the safety of the community.

8 So the defendant will remain detained in the custody
9 of the attorney general of the United States until trial
10 in this matter.

11 Ms. Nelson, this may be a decision that I'm wrong
12 about. And you can talk about that with Mr. Meyer, and
13 you have 14 days from today to file such an appeal. Do
14 you understand your right to appeal my decision?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: It's likely, Mr. Chatham, that
17 either I or Judge Williams if they do appeal this
18 decision because of the sort of time frames here, we may
19 accelerate the time frame for resisting so that we can
20 get the decision more quickly.

21 Is there anything else on behalf of the defendant,
22 Mr. Meyer?

23 MR. MEYER: No, Your Honor.

24 THE COURT: Anything further on behalf of the
25 government?

1 MR. CHATHAM: No, Your Honor.

2 THE COURT: Thank you all. That will conclude
3 our hearing.

4 (The foregoing hearing was
5 concluded at 10:39 a.m.)

* * * *

7 (This concludes the transcript of the audio recording.)

CERTIFICATE

11 I certify that the foregoing is a correct
12 transcript to the best of my ability from the digital
13 recording of proceedings in the above-entitled matter.

S/Shelly Semmler
Shelly Semmler, RDR, CRR

3-8-22
Date

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